

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR

WASHINGTON, D.C. 20006

October 25, 1996

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

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v.

Docket No. WEVA 96-13

EXTRA ENERGY, INC.

BEFORE: Jordan, Chairman; Marks and Riley, Commissioners¹

ORDER
DIRECTION FOR REVIEW

BY: Marks and Riley, Commissioners

On October 17, 1996, Extra Energy, Inc. (“Extra Energy”) filed a motion for reconsideration of the Commission’s October 2, 1996 denial of Extra Energy’s Petition for Discretionary Review (“PDR”). Extra Energy’s PDR sought review of Administrative Law Judge Gary Melick’s decision dated August 23, 1996 in this case. Pursuant to section 113(d)(1) of the Federal Mine Safety and Health Review Act of 1977, 30 U.S.C. § 823(d)(1), the judge’s decision became a final decision of the Commission forty days after its issuance.

Upon consideration of the motion, and under Rule 60(b)(6), Fed. R. Civ. Pro., we reopen this matter, grant the motion for reconsideration, direct review, and set this case down for oral

¹ Pursuant to section 113(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 823(c), this panel of three Commissioners has been designated to exercise the powers of the Commission.

argument. An order setting the date and terms of oral argument will issue at an appropriate time.

Marc Lincoln Marks, Commissioner

James C. Riley, Commissioner

Chairman Jordan, dissenting:

The judge's August 23, 1996 decision in this case became a final decision of the Commission forty days after its issuance. The operator has asked us to reopen these proceedings pursuant to Fed. R. Civ. Pro. 60(b)(6), which permits relief from a final judgment or order for "any . . . reason justifying relief from the operation of the judgment." However, because the respondent has failed to allege any rationale for relief under this rule, I find no adequate basis on which to grant it, and would therefore deny this motion.

Mary Lu Jordan, Chairman